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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,310	05/03/2007	Rafael Posse Espinosa	066440-0012	7094
41552 7590 11/24/2008 MCDERMOTT, WILL & EMERY 4370 LA JOLLA VILLAGE DRIVE, SUITE 700 SAN DIEGO, CA 92122				
EXAMINER DOUKAS, MARIA E				
ART UNIT		PAPER NUMBER		
3767				
MAIL DATE		DELIVERY MODE		
11/24/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/574,310

Applicant(s)

POSSE ESPINOSA, RAFAEL

Examiner

MARIA E. DOUKAS

Art Unit

3767

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 March 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/5508)
- Paper No(s)/Mail Date 12/3/2007
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement filed 12/03/2007 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered. There is no legible copy of foreign patent ES141777.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,047,687 to Turner (Turner).

In Reference to Claim 1

A portable container system (Figure 1) for the application of enemas (col. 1, lines 23-26) comprising: a container (container 16), a hose (irrigation tube 20), and a supporting structure (support 10 comprising outer tube 22 and inner tube 24).

In Reference to Claim 2

System as in claim 1 (see rejection of claim 1 above) comprising a supporting structure that supports the container at the right height to cause a difference in pressure between the container and intestine that is necessary for the solution to enter the intestine freely (col. 2, lines 46-60, whereby movement of the container along the support pins 44 of the support 10 allows proper adjustment to achieve the desired pressure for enema application).

In Reference to Claim 3

System as in claim 1 (see rejection of claim 1 above) comprising a supporting structure that may be disassembled (Figures 2, and 3; col. 2, lines 24-33, whereby the support 10 must be assembled by introducing the inner tube 24 into the open end of the outer tube 22, so therefore the support can be disassembled).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Turner in view of U.S. Patent No. 5,417,326 to Winer (Winer).

Turner teaches the device of claim 1 (see rejection of claim 1 above) and further teaches that the support 10 is collapsible as the inner and outer tube telescope together. Turner fails to teach wherein the support fits within the container 16. Winer teaches a container 10 that has a tubular body 12 in order to provide a container that can hold an item, such as a syringe, to provide protection for the item as well as allow it to be easily portable (col. 1, lines 27-29).

Although Turner does not explicitly teach that the support 10 can fit inside the container 16, the tubular shape of both the support 10 and the container 16 would enable the support to fit inside the container provided the container is appropriately sized to have a greater outer diameter than that of the support. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the size of the container 16 to allow the support to fit within in order to provide a container that can hold an item to provide protection for the item as well as allow it to be easily portable (Winer: col. 1, lines 27-29). In addition, a change in size is generally recognized as being within the level of ordinary skill in the art (see MPEP §2144.04).

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 4,613,994 (Oates) teaches a portable and collapsible enema seat. U.S. Patent No. 5,871,463 (Baker) teaches a self-contained portable colon therapy machine.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARIA E. DOUKAS whose telephone number is (571)270-5901. The examiner can normally be reached on Monday - Friday 7:30 AM - 5:00 PM EDT.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Simons can be reached on (571)272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MD
/Kevin C. Simons/
Supervisory Patent Examiner, Art Unit 3767

